

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
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DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

THELMA RANDOLPH
Respondent

Case No.: I-00-40312

FINAL ORDER

I. Introduction

On December 20, 2000, the Government served a Notice of Infraction upon Respondent Thelma Randolph, alleging a violation of 29 DCMR 306.1(b), which authorizes revocation, suspension or non-renewal of a child development center's license for "[f]ailure to comply with any other federal or District law or regulation applicable to child development facilities." The Notice of Infraction described the nature of the infraction as "[t]he provider had more than 2 infants enrolled." The Government alleged that the violation occurred on November 9, 2000. It did not seek to take any action with respect to Respondent's license, but sought a fine of \$500.00, as authorized by 16 DCMR 3222.1(d).

On January 19, 2001, the Government served a corrected Notice of Infraction upon Respondent. It still charged that Respondent committed a violation of 29 DCMR 306.1(b) on

November 9, 2000 and still sought a \$500.00 fine. The corrected Notice of Infraction, however, described the nature of the infraction as having an unauthorized adult taking care of children in Respondent's child development home.

Respondent filed a timely plea of Deny, and an evidentiary hearing was set for March 2, 2001. On February 6, 2001, the Government filed a motion to amend the Notice of Infraction to drop the charge of violating 29 DCMR 306.1(b) and to substitute allegations that Respondent violated both 29 DCMR 320.5, which requires the caregiver in a child development home to develop a plan for emergency situations, "including the designation of a responsible adult to substitute for the caregiver as needed," and 29 DCMR 320.7, which requires a caregiver to cooperate with District officials "in placing and implementing the child development program." The Government sought a fine of \$100.00 for each alleged offense.

I granted the motion for leave to amend, and allowed Respondent's original plea of Deny to apply to the amended charges. All parties appeared for the hearing on March 2, 2001. At the hearing, Respondent sought to amend her plea to Admit with Explanation, and I granted that request.

II. Summary of the Evidence

Respondent operates a child development home at 308 Upshur Street, N.W. She testified that she was out of town attending a convention on November 9, 2000 and that she had left her adult son in charge of the children on that date. She stated that her son had not yet obtained the

health examination required of employees of child development facilities, but that he had a November 10 appointment for the examination. She stated that her son regularly helps her by caring for the children, and that she was aware that he needed an annual medical examination in order to be permitted to do so. She testified that he had arranged an earlier appointment for an examination in February 2000, but did not keep it. She had no explanation for his failure to arrange another appointment until November.

April Bramble, the inspector who issued the Notice of Infraction, testified that she had spoken with Respondent in October and warned her that her son could not care for the children unless he had the required health examination. Respondent agreed that this conversation took place and admitted that she knew her son was not authorized to care for the children. She stated, however, that she wanted to attend the convention and decided to take a chance by leaving her son in charge.

III. Findings of Fact

1. By her plea of Admit with Explanation, Respondent has admitted that she violated 29 DCMR 320.5 and 29 DCMR 320.7 on November 9, 2000.
2. On November 9, 2000, Respondent left the children at her child development home in the care of her son. She knew that he did not have the required health examination at that time. Respondent had allowed her son to take care of the children on prior occasions and knew that he did not have the required health examinations when she allowed him to do so.

3. Respondent has been aware at least since February 2000 that her son needed to have a health examination in order to care for the children.
4. By her plea of Admit with Explanation, Respondent has accepted responsibility for her violations.

IV. Conclusions of Law

1. Based upon her plea of Admit with Explanation, I conclude that Respondent violated 29 DCMR 320.5 and 29 DCMR 320.7. At first glance, the charges alleged by the Government – failure to develop an emergency plan in violation of § 320.5 and failure to cooperate with District officials in violation of §320.7 – do not seem to fit the evidence squarely. It is unclear why the Government did not charge Respondent with violating 29 DCMR 325.13, which requires all employees of a child development facility (a term defined by 29 DCMR 399.1 to include child development homes such as Respondent’s) to have an annual health examination. Respondent’s plea of Admit with Explanation, however, is an admission that she committed the violations alleged by the Government and I will not address this issue further.¹
2. Ordinarily, Respondent’s acceptance of responsibility would justify some reduction in the fines sought by the Government. In this case, however, Respondent’s knowing violation and her lengthy delay in making sure that her son obtained the necessary medical

¹ In particular, due to Respondent’s plea, it is not necessary to decide whether 29 DCMR 320.7, which requires the caregiver in a child development home to be “responsible for cooperation with District officials . . . in placing and implementing the child development program” permits the imposition of an additional fine every time that a licensing inspector discovers a violation that she previously had warned a licensee not to commit.

examination outweigh the mitigating evidence of her acceptance of responsibility. Accordingly, I will impose the full \$100.00 fine for each of the two violations at issue here. Respondent, therefore, will owe a total of \$200.00.

V. Order

Based upon the above findings of fact and conclusions of law, it is, this _____ day of _____, 2001:

ORDERED, that Respondent Thelma Randolph shall make a single payment totaling **TWO HUNDRED DOLLARS (\$200.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code §6-2715). A failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's license or permit pursuant to D.C. Code § 6-2713(f).

/s/ **4-6-01**

John P. Dean
Administrative Judge